

## **ADDENDUM TO THE INITIAL STATEMENT OF REASONS**

### **PROBLEM STATEMENT**

The Public Employment Relations Board (PERB) is responsible for maintaining labor harmony between the state's public employers and its approximately 2.3 million employees. It does this by administering and enforcing the state's fourteen labor-relations acts. In enacting these acts, the Legislature seeks to promote full communication between public employers and their employees by providing reasonable methods of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. (See e.g. Cal. Gov. Code, §§ 3500, 3512, 3540.)

In performing its mission, PERB functions as an administrative quasi-judicial body. It investigates violations of state labor laws, conducts informal settlement conferences and formal hearings (akin to civil trials), and issues written decisions that adjudicate disputes within its jurisdiction. Administrative Law Judges or Regional Attorneys (both referred to as Board agents) issue the initial decision in a case. Board agents also issue decisions in representation cases to resolve questions of representation. Any party that disagrees with a Board agent's decision may appeal to the Board itself by filing a statement of exceptions. The Board itself then issues its decision.

On April 13, 2017, PERB launched its Case Processing Efficiencies Initiative (Initiative) to examine ways to improve the processing of cases. The purpose of the Initiative was to identify changes to PERB's case processing protocols with the ultimate goal to streamline case processing and address a backlog of cases. Workshops were conducted to elicit feedback from PERB's employees and its constituents regarding what changes could be made to improve overall case processing. On February 22, 2018, the Board issued its Case Processing Efficiency Initiative Report, and then held two special public meetings on March 14, 2018, in Sacramento, California, and on March 15, 2018, in Glendale, California, to elicit feedback from stakeholders.

On June 14, 2018, during a public meeting, the Board adopted its top Initiative priorities for implementation. PERB's regulations for expediting cases were identified by stakeholders as inefficient and requiring change. In response, the Board adopted Initiative Proposal 4a, which reads, "Setup an expedited process for charges based on the level of complexity of the charge." Based on feedback from constituents and PERB employees, the Board agreed that the current regulations for expediting matters are inefficient for several reasons—regardless of whether the case is an unfair practice charge or a representation matter. First, the current regulations lack information typically found in rules for judicial processes, such as with whom to file the request, how to label the request, whether the request may be combined with other documents, the

filing of responses to the requests, and whether a denial of the request is with prejudice. Second, the current rules do not provide for which cases are subject to a mandatory expediting process. For example, many of PERB's representation matters require a prompt resolution to ensure that public employees are able to form, join and participate in union activities. Also, the current rules are silent regarding the Board's required procedures for expediting cases. The proposed changes delineate the manner in which priority is given to an expedited case, how documents must be labeled to notate the expedited manner of the proceedings, and whether expedited cases are subject to abeyances, continuances or extensions of time.

The absence of these standard rules leads to a process that is often disjointed, as parties do not know with whom to file the request, whether the request is for all divisions of PERB, the time frame for filing a response to a request to expedite, as well as whether it is even necessary to file a motion to expedite. The absence of this information leads to delays in processing, which undermines the purpose of expediting a case.

In amending the current regulations for expediting proceedings at the various levels of PERB, the Board sought to eliminate those aspects of the current regulations that result in inefficiencies. In doing so, the Board relied upon the February 22, 2018 Case Processing Efficiency Initiative Report and the May 23, 2018 Recommendations Regarding Process Improvement Suggestions Memorandum. To obtain a copy of these documents, you may send an e-mail to [james.coffey@perb.ca.gov](mailto:james.coffey@perb.ca.gov).

## **ANTICIPATED BENEFITS OF THE AMENDED REGULATIONS**

The proposed amendments begin by stating with whom to file a motion to expedite proceedings within a single division of the Board and within all divisions of the Board. Clarifying the proper recipient for filing depending on the nature of the motion to expedite should result in fewer filing errors for attorneys and non-attorneys alike. In addition, the proposed amendments note that the motion must be appropriately labeled, and may not be part of or combined with any other document other than a brief or declarations supporting the motion. Because parties often include a motion to expedite proceedings as part of a large, voluminous filing, this proposed change results in a more efficient process, as it is less likely that a motion to expedite goes unnoticed by a Board agent or the other party or parties to a case.

The proposed amendments also provide for a uniform timeline for filing a response to a motion to expedite, and clarifies that no reply brief shall be filed unless ordered by the Board. The current regulations are silent regarding the filing of responses to a motion to expedite and the filing of a reply brief, which has resulted in some parties filing a response and/or reply brief while others do not. A response to a request to expedite is

a useful tool, as it allows the Board to decide cases more quickly by providing prompt citations to legal precedent or statutory law necessary to analyze the legal issues raised in a party's motion to expedite proceedings. The current regulations also do not address whether denial of a motion to expedite, in whole or in part, is without prejudice to a party's ability to renew its motion. The proposed changes require that denial of any motion to expedite be without prejudice, thus eliminating any confusion regarding whether a party may refile its motion.

In addition, the proposed amendments set forth applicable criteria for expediting matters before the Board. The current rules state that the Board itself, the Chief Administrative Law Judge or the General Counsel "may" expedite any matter pending before the Board, and are thus permissive regarding whether the Board may expedite certain matters. Some cases however, such as petitions concerning representation matters, require prompt adjudication by the Board in order to promote labor stability. Therefore, the proposed changes advance efficient labor relations by requiring that these sensitive matters be expedited from initial filing to conclusion, without any motion or order. For such cases, the amended regulations also ensure a speedy resolution by providing for the limited circumstances of when an abeyance, extension of time or continuance may be granted by the Board.

The proposed amendments also augment the current rules by setting forth specific criteria for determining whether to expedite cases that are not subject to mandatory expedited processing. This information promotes efficient processing by informing parties not only about the most favorable means to draft a motion to expedite proceedings but, in some cases, whether to file the motion in the first place.

Further, the proposed amendments explain the Board's procedures for expediting a case. Under the current rules, parties are unaware of how priority is determined for an expedited case. The revised regulations resolve this ambiguity by clarifying that a case shall be given priority and decided on an expedited basis as determined by the appropriate division head, answering the question of whether the Board follows a strict timeline when expediting a case. The current rules are also silent regarding PERB's procedure for identifying an expedited case. The amended regulations fill in the gap by noting that each document filed in an expedited case must state, on the first page, that the matter is expedited. The proposed changes ensure that all parties, including Board agents, attorneys and non-attorneys, remain aware that a case is subject to expedited proceedings. These changes should result in fewer filing errors, as all parties are aware of the accelerated nature of the proceedings and any applicable briefing deadlines. Additionally, the amended regulations set forth guidelines concerning abeyances, continuances and requests for extensions of time. Because the current rules are silent

on these issues, the proposed changes eliminate any confusion regarding the limited circumstances where an expedited matter may be subject to a delay in processing.

Lastly, the proposed amendments close a gap in the listing of cases where the Board agent's decision shall become final unless the Board itself issues a decision not later than 180 days from the date the exceptions were filed with the Board. This proposed change ensures that representation cases requiring prompt adjudication are subject to a final decision by PERB within 180 days.

Essentially, the proposed amendments are a continuation of the Board's efforts to update its case processing regulations so as to provide constituents with easy to understand yet comprehensive rules on case processing.

## **SECTION-BY-SECTION EXPLANATION FOR AMENDMENT**

**Section 32147** concerns expediting matters before the Board. Section 32147(a)(1) clarifies in which division of the Board a motion to expedite may be filed, which differs based on whether the motion is for a single division of PERB or all divisions. It also specifies that a motion to expedite proceedings at all divisions of PERB must be filed with the Board itself. This section resolves the ambiguity that exists in the current regulations regarding which division to file a motion to expedite.

Section 32147(a)(2) sets forth the requirements of filing a motion to expedite, which include how to label a motion to expedite, whether the motion may be included with other documents and, for cases that do not require mandatory expediting by PERB, a requirement that the motion state why the case satisfies the criteria necessary to receive expedited processing. This section ensures that a motion to expedite does not go unnoticed by a Board agent or other parties to a case. It also clarifies that a party filing a motion to expedite a case that is not subject to mandatory expediting provide justification for why the case should be expedited.

Section 32147(a)(3) clarifies who may file a response to a motion to expedite and sets the deadline for filing a response, while also noting that reply briefs must not be filed unless ordered by PERB. This section ensures that the case is processed efficiently by instituting a deadline for a response and eliminating the need for a reply brief, which would cause additional delay.

Section 32147(a)(4) specifies that, unless otherwise ordered, a denial of any motion to expedite is without prejudice, and therefore a party may renew its motion. This ensures that, for cases where a motion to expedite has been denied, if a case later becomes suitable for expedited processing a party may refile a motion to expedite.

Section 32147(a)(5) provides PERB's General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services and the Board itself with the authority to expedite any case on its own motion. As the agency tasked with administering public sector labor statutes, this section allows PERB to use its expertise, without a motion from a party, to decide that a case should be expedited.

Section 32147(b) sets forth the applicable criteria for granting a motion to expedite. Or, stated differently, this amended regulation specifies which cases must be expedited by PERB and which cases PERB has discretion to expedite.

Section 32147(b)(1)(A) lists the cases that must be expedited by PERB and do not require a motion to expedite or order to expedite. Section 32147(b)(1)(B) adds that cases where a representation election or other certification or recognition process or procedure has been stayed pending resolution of the case are also required to be expedited. For example, if a representation election is stayed, i.e. placed on hold pending the resolution of a case, then that case must be subject to expedited processing. These sections promote efficiency because they require PERB to immediately expedite certain cases.

For cases that are not subject to mandatory expediting, section 32147(b)(2)(A) through section 32147(b)(2)(G) list the criteria that shall be considered in determining whether a case should be expedited. These sections promote efficiency by providing for the applicable criteria for parties to use when writing a persuasive legal brief in support of a motion to expedite, which makes it easier for PERB to determine whether a case should be expedited.

Section 32147(b)(2)(A) considers whether expedited processing is necessary to preserve the Board's ability to remedy a violation. For example, if after a final decision of the Board, the Board's order issued too late to effectively remedy the conduct. This consideration is essential because the Board's ability to remedy unlawful conduct is critical to PERB's enforcement of the statutes under its jurisdiction.

Section 32147(b)(2)(B) considers whether the alleged conduct causes irreparable harm to the exercise of employee or employee organization rights. For example, if delayed case processing would irreparably harm an employee organization's ability to mount an effective organizing campaign. This consideration is essential because the Board's statutory mandate is to protect employees' right to form, join and participate in the activities of employee organizations.

Section 32147(b)(2)(C) considers whether resolution of the case would benefit the public sector labor community. For example, if there is an unresolved question of which an earlier resolution would improve overall public sector labor relations. This

consideration is essential because the Legislature has tasked PERB with administering public sector labor statutes.

Section 32147(b)(2)(D) considers whether the case arises from a representation or recognition issue. This consideration is essential because prompt resolution of representation or recognition issues are vital to PERB's statutory mandate to protect employees' right to form, join and participate in the activities of employee organizations.

Section 32147(b)(2)(E) considers whether there is a court injunction that is subject to the resolution of the case. For example, if a court injunction is in place to preserve the status quo of a matter and resolution of the case by PERB determines how long the injunction remains in place. This consideration is essential because PERB's attaining of court injunctions protects the Board's ability to remedy unlawful conduct and safeguards the rights of employees and employee organizations.

Section 32147(b)(2)(F) considers the circumstances underlying the case, such as the number of employees involved; the size of any monetary remedy; and the nature, scope or importance of any non-monetary remedy. For example, it may be necessary for PERB to prioritize a case where the alleged unlawful conduct affects a large number of employees or if the case could result in a substantial monetary remedy. This consideration is essential because delays in case processing for matters involving a significant number of employees or a substantial amount of money often cause difficulties in parties' compliance with the Board's remedy.

Lastly, given the variance in public sector labor law cases, section 32147(b)(2)(G) allows PERB to consider whether any other compelling circumstances exist that would justify expedited processing by providing parties with the opportunity to raise these issues before PERB. This consideration is essential because the Board's jurisdiction over various public sector labor statutes yields disputes that are often unique and it is imperative to allow parties to explain why a unique circumstance requires expedite processing.

Section 32147(c) provides the required procedures for expedited cases. Section 32147(c)(1) clarifies that the priority given to expedited cases is decided by, as applicable, PERB's General Counsel, Chief Administrative Law Judge, Director of State Mediation and Conciliation Services or the Board itself. This section resolves the ambiguity of which division head decides how priority is given to an expedited case.

Section 32147(c)(2) requires that any documents filed in a case that is subject to expedited processing prominently display the words "EXPEDITED CASE" on the document's first page. This section ensures that documents filed in an expedited case are not unnoticed by a party or Board agent.

Section 32147(c)(3) mandates that when exceptions are pending in a case falling under subparagraph (b) of section 32305, which are matters concerning representation or recognition, PERB must not grant an abeyance or extension of time. Abeyances and extensions of time hinder case efficiency by resulting in slower case processing.

Section 32147(c)(4) clarifies that for expedited cases that do not fall under subparagraph (b) of section 32305, an abeyance may only be granted if all parties agree, while also clarifying that an extension of time to file any document or a request to continue a formal hearing may only be granted if all parties agree, the continuance is necessary to mitigate prejudice caused by an amended pleading, or the requesting party demonstrates extraordinary circumstances that outweigh any prejudice to other parties. This section promotes efficiency by providing guidelines for when expedited cases that do not fall under subparagraph (b) of section 32305 may be placed in abeyance, subject to a continuance, or an extension of time.

Each of the above-described proposed amendments are necessary to make PERB's administrative process more effective and efficient.

**Section 32305** concerns the finality of Board agent decisions. The proposed amendment to section 32305(b) consists of adding cases arising under section 61215 to the listing of matters arising under specified PERB regulations, where a Board agent's decision is final unless the Board itself issues a decision not later than 180 days from the date exceptions were filed with the Board. The proposed amendment is necessary to ensure that certain representation cases are adjudicated by PERB within 180 days from the date exceptions were filed with the Board.

The proposed amendment to section 32305(c) clarifies that, in addition to extensions of time, PERB shall not grant abeyances in cases that arise out of section 32305(b). The proposed change promotes efficiency, as abeyance periods delay case processing.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

In April 2017, the Board approved the Initiative to generate ideas on improving and streamlining the processing of cases. PERB engaged constituents and staff in the Los Angeles, San Francisco, and Sacramento regional offices to discuss changes the Board could consider to process our workload more efficiently. Preliminary results of these meetings were tabulated and presented for public comments in March 2018. On June 14, 2018, the Board itself met in open session to consider the final recommended report and vote on changes to enact. Among the approved initiatives, the Board adopted changes to PERB's regulations addressing expediting matters before the Board. These proposals are described in the Case Processing Efficiency Initiative Report.

## **ECONOMIC IMPACT ASSESSMENT** (Government Code section 11346.3(b))

In accordance with Government Code Section 11346.3(b), PERB has made the following assessments regarding the proposed amendment:

### Creation or Elimination of Jobs Within the State of California

The proposed amendments are designed to remove the ambiguities present in the current regulations used by parties to file a motion to expedite proceedings before PERB, as well to delineate criteria for determining which cases are subject to expediting, and the procedures for processing expedited cases. In clarifying the process for expediting a case, no jobs in California will be created or eliminated.

### Creation of New Businesses or Elimination of Existing Businesses Within the State of California

The proposed amendments are designed to remove the ambiguities present in the current regulations used by parties to file a motion to expedite proceedings before PERB, as well to delineate criteria for determining which cases are subject to expediting, and the procedures for processing expedited cases. In making this change, no new businesses will be created, or existing businesses eliminated in California, and the ability of California businesses to compete with businesses in other states will not be impacted.

### Expansion of Businesses Within the State of California

The proposed amendments are designed to remove the ambiguities present in the current regulations used by parties to file a motion to expedite proceedings before PERB, as well to delineate criteria for determining which cases are subject to expediting, and the procedures for processing expedited cases. In updating PERB's case processing rules, no existing businesses in California will be expanded.

PERB will continue to investigate the potential for economic impact throughout this rulemaking process.

### Benefits of the Amendment to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

By updating the Board's process for expediting cases, PERB will improve public sector labor relations by providing processes that are efficient and, therefore, provide a quicker means for the Board to address labor disputes before those disputes escalate. This, in turn, will promote fuller communication between public employers and their employees in resolving disputes over wages, hours and other terms and conditions of employment.



The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment. The proposed regulatory action will further the policies underlying prompt resolution of labor disputes by providing a process to expediently resolve alleged violations of California's labor relations laws. California residents' general welfare will be benefitted by stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that California's public agencies and employees provide to California's communities.

#### **INFORMATION RELIED UPON TO SUPPORT PERB'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The proposed amendments make no substantive changes to existing state labor laws, but serve only to improve already existing legal processes for expediting matters before the Board and timelines for final Board adjudication of certain representation matters. Based on the limited changes to these processes, and that the changes create efficiencies for both PERB and its constituents, PERB has initially determined that the proposed regulatory action will not have a significant adverse economic impact on business.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

PERB has not identified any adverse impacts on small business as a result of the proposed amendments, and has not identified any alternatives that would lessen any adverse impact on small business. Moreover, at this stage of the rulemaking process, no reasonable alternatives to the proposed regulatory action has been proposed by members of the public.

#### **MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT**

PERB's amended regulations do not mandate the use of any specific technologies or equipment.